

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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Zipnosis, Inc.,

Plaintiff,

Civil File No. \_\_\_\_\_

vs.

SnapMD, Inc.,

Defendant.

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**COMPLAINT AND JURY DEMAND**

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Zipnosis, Inc. (“Zipnosis”), by and through its undersigned counsel, for its Complaint against SnapMD, Inc. (“SnapMD”) states and alleges the following.

**THE PARTIES**

1. Zipnosis is a Minnesota corporation with its principal place of business at 252 North 1<sup>st</sup> Avenue, Minneapolis, MN 55401.

2. Upon information and belief, SnapMD is a Delaware corporation with its principal place of business at 121 Glendale, CA 91203.

**NATURE OF ACTION**

3. This is an action for trademark infringement, violation of the Minnesota Deceptive Trade Practices Act at Minn. Stat. § 325D.43 to 325D.48, and unfair competition under the common law of the State of Minnesota.

4. As set forth below, SnapMD has willfully infringed Zipnosis's rights in its trademark, YOUR CLINICIANS YOUR PATIENTS YOUR BRAND, causing irreparable injury to Zipnosis in violation of state and federal law.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this action under 28 U.S.C. § 1338(a) (acts of Congress relating to trademarks), and 28 U.S.C. § 1338(b) (pendent unfair competition claims). The Court has supplemental jurisdiction over the state law and common law claims under 28 U.S.C. § 1367(a).

6. Venue is proper in this District under 28 U.S.C. § 1391(b) and (c).

7. This Court has personal jurisdiction over SnapMD by virtue of SnapMD's contacts with the State of Minnesota. On information and belief, SnapMD has used the infringing mark in the State of Minnesota and directed advertisements bearing the infringing mark to residents of the State.

### **ZIPNOSIS TRADEMARK RIGHTS**

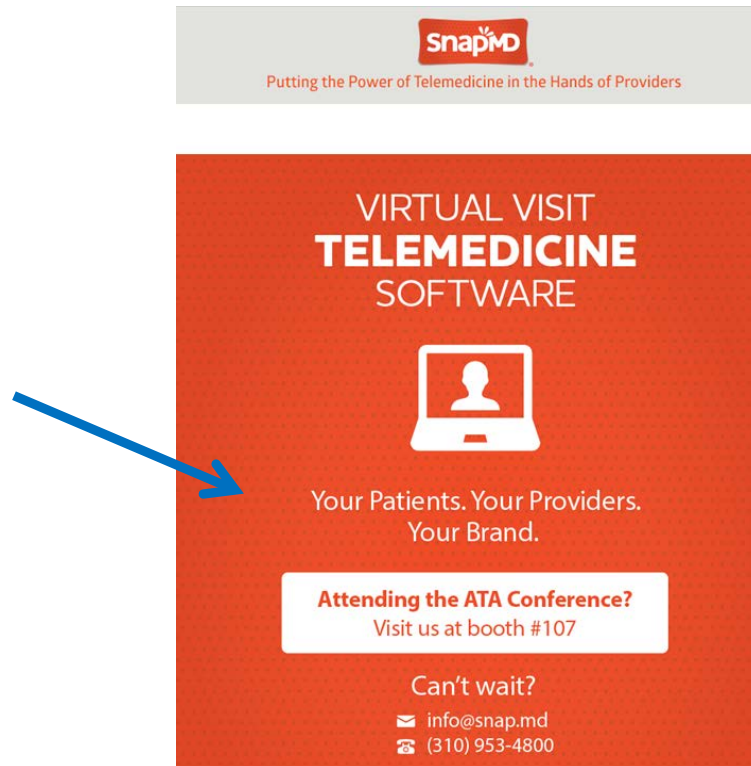
8. Zipnosis provides online medical diagnosis and consulting services under a variety of trademarks, including YOUR CLINICIANS YOUR PATIENTS YOUR BRAND.

9. Zipnosis owns U.S. Trademark Application No. 86/748,152 for the trademark YOUR CLINICIANS YOUR PATIENTS YOUR BRAND for use with "medical diagnostic services; medical consulting services; providing medical treatment recommendations, prescriptions and prescription renewals, [and] facilitate medical treatment of patients."

10. As a result of the widespread use and display of the YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark, the public and the trade associate the YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark exclusively with Zipnosis.

### SNAPMD'S WRONGFUL CONDUCT

11. SnapMD recently began using the tagline YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. in connection with online medical diagnosis and consulting services as follows:



12. This tagline has identical meaning and commercial impression as Zipnosis's trademark, and is being used to promote services that are directly competitive.

13. Zipnosis sent a cease and desist letter to SnapMD demanding that SnapMD stop using the trademark YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. on September 17, 2015. SnapMD failed to respond and is continuing to use the mark.

14. SnapMD's conduct in using the trademark YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. is unauthorized.

15. SnapMD's use of the trademark YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. is a deliberate attempt to trade on the valuable trademark rights and the substantial good will Zipnosis owns in the trademark YOUR CLINICIANS YOUR PATIENTS YOUR BRAND.

16. The foregoing allegations are incorporated in the claims below.

**COUNT ONE**  
**TRADEMARK INFRINGEMENT**  
**IN VIOLATION OF 15 U.S.C. § 1125(a)**

17. Zipnosis re-alleges and incorporates by reference the previous allegations as if fully set forth herein.

18. Zipnosis has used the trademark YOUR CLINICIANS YOUR PATIENTS YOUR BRAND in connection with and to identify its medical diagnosis and consulting services.

19. SnapMD has infringed Zipnosis's trademark rights in its YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark through various acts, including, without limitation, the selling, advertising and promotion of products and services under the trademark YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND.

20. SnapMD's use of the trademark YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. is without permission or authority from Zipnosis and is likely to cause confusion, to cause mistake and/or to deceive.

21. SnapMD's conduct constitutes trademark infringement in violation of Section 43(a) of the Lanham Act, to the substantial and irreparable injury of the public and of Zipnosis's business reputation and good will.

22. SnapMD's infringing activities have caused and, unless enjoined by this Court, will continue to cause, irreparable injury and other damage to Zipnosis's business, reputation and good will in its YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark.

23. Zipnosis has been damaged by SnapMD's infringement in an amount to be proven at trial.

**COUNT TWO**  
**VIOLATION OF MINNESOTA DECEPTIVE TRADE PRACTICES ACT**

24. Zipnosis re-alleges and incorporates by reference the prior allegations as if fully set forth herein.

25. Zipnosis's YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark is a "trademark" as defined in Minn. Stat. § 325D.43.

26. Zipnosis has used its YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark in Minnesota and, on information and belief, SnapMD has engaged in the conduct described in this Complaint in Minnesota.

27. SnapMD's conduct constitutes unfair and deceptive acts and practices in violation of the Minnesota Deceptive Trade Practices Act.

28. SnapMD's wrongful and deceptive activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Zipnosis's business, reputation and good will.

29. As a result of SnapMD's wrongful conduct, Zipnosis is entitled to an injunction and an award of attorneys fees under Minn. Stat. § 325D.45.

**COUNT THREE**  
**UNFAIR COMPETITION**

30. Zipnosis re-alleges and incorporates by reference the prior allegations as if fully set forth herein.

31. SnapMD's activities as stated herein constitute unfair competition and an infringement of Zipnosis's rights in the YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark.

32. SnapMD's wrongful and infringing activities have caused, and unless enjoined by this Court will continue to cause, irreparable injury and other damage to Zipnosis's business, reputation and good will.

33. Zipnosis has been damaged by SnapMD's conduct in an amount to be proven at trial.

**JURY DEMAND**

34. Zipnosis demands a jury trial.

**WHEREFORE**, Zipnosis asks the Court to:

1. Preliminarily and permanently enjoin SnapMD and its officers, agents, servants, employees, attorneys, and all those persons in active concert or participation with SnapMD from engaging in the following activities:

(a) Using the YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. trademark or any other trademark that is confusingly similar to Zipnosis's YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark;

(b) Advertising, displaying, selling, exporting or otherwise distributing (whether in paper or electronic form), any and all advertising, marketing or promotional materials, product packaging, signage, banners, invoices, pamphlets and the like, as well as any goods or services, containing the YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. trademark, or any other trademark that is confusingly similar to Zipnosis's YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark;

(c) Registering, attempting to register, or maintaining any trademark, trade name, domain name, trade designation, or other indicia of origin or source containing the YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. trademark, or any other trademark that is confusingly similar to Zipnosis's YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark;

(d) Committing any acts or making any statements calculated, or the reasonably foreseeable consequence of which would be, to infringe any of Zipnosis's rights in the YOUR CLINICIANS YOUR PATIENTS YOUR BRAND trademark, or to confuse, mislead, or deceive customers as to sponsorship, approval or affiliation of Zipnosis with SnapMD; and

(e) Conspiring with, aiding, assisting or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (d) above.

2. Enter judgment for Zipnosis on its claims and require SnapMD to account to Zipnosis for SnapMD's profits and the actual damages suffered by Zipnosis as a result of SnapMD's acts of infringement, together with interest, and that Zipnosis's recovery be trebled under Section 35 of the Lanham Act (15 U.S.C. §1117).

3. Require SnapMD to surrender for destruction all name-plates, labels, advertisements, and other materials incorporating or reproducing the infringing YOUR PATIENTS. YOUR PROVIDERS. YOUR BRAND. trademark, pursuant to Section 36 of the Lanham Act (15 U.S.C. §1118), Section 333.28 *et seq.* and 325D.43 through 325D.48 of the Minnesota Statutes and the equitable power of this Court to enforce the common law of the State of Minnesota.

4. Enter judgment requiring SnapMD to pay Zipnosis's attorneys' fees, together with costs of this suit, pursuant to Section 35 of the Lanham Act (15 U.S.C. §1117) and Section 333.29 and 325D.45 of Minnesota Statutes.



5. Grant such other and further relief as may be just and equitable.

Dated: October 27, 2015

s/ Lora M. Friedemann

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